IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6169 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHMAD RIZWAN @ ABU ANVAR HUSEN SHAIKH

Versus

POLICE COMMISSIONER

Appearance:

1. Special Civil Application No. 6169 of 2004

MS BANNA S DUTTA for Petitioner No. 1

MR AY KOGJE, LD.AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/07/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenu has challenged his detention order dated 17.12.2003, by

which he is detained under PASA as a dangerous person. Along with the said order, the petitioner is served with the grounds of detention. In the grounds of detention, there is a reference of three criminal cases pending against the petitioner at three police stations. All these offences are under sec.379 read with sec.114 of Indian Penal Code. The alleged illegal activities undertaken by the petitioner are also highlighted in the order of detention.

2. Learned advocate for the petitioner has pointed out that one co-detenu had filed Special Civil Application No.1518 of 2004 before this Court and this Court has already released the co-detenu. It is also submitted that since the cases in question are of individual type of theft cases, it cannot be said that any breach of public order is committed by the petitioner. At the relevant time the petitioner was in judicial custody in connection with the cases No.1 and 2.

3. The facts of this case are that the petitioner has been detained under PASA though, of course, no material is shown as to on what basis the authority has come to the subjective satisfaction that the petitioner may be released on bail. On this very identical ground, since this Court has released the co-detenu and further, since the authority has not clearly stated as to on what basis they have come to the subjective satisfaction that the petitioner may be released on bail even though one Court has rejected his bail application in connection with cases No.1 and 2, simply because the petitioner herein has preferred revision application against the order of the Magistrate rejecting the bail application, that itself cannot be treated as a ground for detaining the petitioner unless some more relevant materials are shown for detaining the petitioner. Therefore, on the aforesaid ground, the order of detention is required to be quashed and set aside.

4. Considering the said aspect, this petition is allowed. The order of detention dated 17.12.2003 is quashed and set aside. The detenu, Mahmad Rizwan @ Abu Anvar Husen Sheikh is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B. Majmudar, J.)

syed/